

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 368

By COMMITTEE ON JUDICIARY

June 13

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon insert “creating new pro-  
2 visions; and” and delete the comma and insert “and” and delete “and 164.875”.

3 Delete lines 4 through 26 and delete pages 2 through 4 and insert:

4 **“SECTION 1. (1) A person commits the crime of unlawful operation of an audiovisual**  
5 **device if the person knowingly operates the audiovisual recording function of any device in**  
6 **a motion picture theater, while a motion picture is being exhibited, without the written**  
7 **consent of the motion picture theater owner.**

8 **“(2) Unlawful operation of an audiovisual device is a Class B misdemeanor.**

9 **“(3) The provisions of subsection (1) of this section do not apply to any activity under-**  
10 **taken in the course of bona fide law enforcement activity or necessary to the proper func-**  
11 **tioning of the criminal justice system.**

12 **“SECTION 2.** ORS 131.655 is amended to read:

13 *“131.655. [(1) Notwithstanding any other provision of law, a peace officer, merchant or merchant’s*  
14 *employee who has probable cause for believing that a person has committed theft of property of a store*  
15 *or other mercantile establishment may detain and interrogate the person in regard thereto in a rea-*  
16 *sonable manner and for a reasonable time.]*

17 *“[(2) If a peace officer, merchant or merchant’s employee, with probable cause for believing that a*  
18 *person has committed theft of property of a store or other mercantile establishment, detains and inter-*  
19 *rogates the person in regard thereto, and the person thereafter brings against the peace officer, mer-*  
20 *chant or merchant’s employee any civil or criminal action based upon the detention and interrogation,*  
21 *such probable cause shall be a defense to the action, if the detention and interrogation were done in*  
22 *a reasonable manner and for a reasonable time.]*

23 **“(1) Notwithstanding any other provision of law, a person may be detained in a reasonable**  
24 **manner and for a reasonable time by:**

25 **“(a) A merchant or merchant’s employee who has probable cause for believing that the**  
26 **person has committed theft of property of a store or other mercantile establishment; or**

27 **“(b) The owner or lessee of a motion picture theater or authorized agent or employee of**  
28 **the owner or lessee who has probable cause to believe that the person has violated section**  
29 **1 of this 2005 Act.**

30 **“(2) Probable cause is a defense to any civil or criminal action based on detention and**  
31 **interrogation that a person brings against:**

32 **“(a) A merchant or merchant’s employee who has detained the person in a reasonable**  
33 **manner and for a reasonable time based on probable cause for believing that the person has**  
34 **committed theft of property of a store or other mercantile establishment; or**

35 **“(b) The owner or lessee of a motion picture theater or authorized agent or employee of**

1 **the owner or lessee who has detained the person based on probable cause for believing that**  
2 **the person has violated section 1 of this 2005 Act.**

3 **“SECTION 3.** ORS 164.864 is amended to read:

4 “164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873 and 164.875 **and**  
5 **section 1 of this 2005 Act** and this section, unless the context requires otherwise:

6 **“(1) ‘Audiovisual recording function’ means the capability of a device to record or**  
7 **transmit a motion picture or any part of a motion picture by means of any technology now**  
8 **known or later developed.**

9 “[1] (2) ‘Commercial enterprise’ means a business operating in intrastate or interstate com-  
10 merce for profit. ‘Commercial enterprise’ does not include:

11 “(a) Activities by schools, libraries or religious organizations;

12 “(b) Activities incidental to a bona fide scholastic or critical endeavor;

13 “(c) Activities incidental to the marketing or sale of recording devices; and

14 “(d) Activities involving the recording of school or religious events or activities.

15 “[2] (3) ‘Fixed’ means embodied in a recording or other tangible medium of expression, by or  
16 under the authority of the author, so that the matter embodied is sufficiently permanent or stable  
17 to permit it to be perceived, reproduced or otherwise communicated for a period of more than  
18 transitory duration.

19 “[3] (4) ‘Live performance’ means a recitation, rendering or playing of musical instruments or  
20 vocal arrangements in an audible sequence in a public performance.

21 “[4] (5) ‘Manufacturer’ means the entity authorizing the duplication of a specific recording, but  
22 shall not include the manufacturer of the cartridge or casing itself.

23 “[5] (6) ‘Master recording’ means the master disk, master tape, master film or other device  
24 used for reproducing recorded sound from which a sound recording is directly or indirectly derived.

25 “[6] (7) ‘Motion picture’ includes any motion picture, regardless of length or content, that is  
26 exhibited in a motion picture theater [*to paying customers*], exhibited on television to paying cus-  
27 tomers or under the sponsorship of a paying advertiser or produced and exhibited for scientific re-  
28 search or educational purposes. ‘Motion picture’ does not include [*motion pictures exhibited at home*  
29 *or movies or*] amateur films that are shown free or at cost to friends, neighbors or civic groups.

30 **“(8) ‘Motion picture theater’ means a movie theater, screening room or other venue that**  
31 **is being utilized primarily for the exhibition of a motion picture.**

32 “[7] (9) ‘Owner’ means a person who owns the sounds fixed in a master phonograph record,  
33 master disk, master tape, master film or other recording on which sound is or can be recorded and  
34 from which the transferred recorded sounds are directly or indirectly derived.

35 “[8] (10) ‘Recording’ means a tangible medium on which information, sounds or images, or any  
36 combination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an  
37 original phonograph record, disk, tape, audio or video cassette, wire, film or other medium now ex-  
38 isting or developed later on which sounds, images or both are or can be recorded or otherwise  
39 stored or a copy or reproduction that duplicates in whole or in part the original.

40 “[9] (11) ‘Sound recording’ means any reproduction of a master recording.

41 “[10] (12) ‘Videotape’ means a reel of tape upon which a motion picture is electronically or  
42 magnetically imprinted by means of an electronic video recorder and which may be used in video  
43 playback equipment to project or display the motion picture on a television screen.

44 **“SECTION 4.** ORS 164.864, as amended by section 42, chapter 666, Oregon Laws 2001, is  
45 amended to read:

1 “164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873, 164.875 and 164.879  
2 **and section 1 of this 2005 Act** and this section, unless the context requires otherwise:

3 “(1) **‘Audiovisual recording function’ means the capability of a device to record or**  
4 **transmit a motion picture or any part of a motion picture by means of any technology now**  
5 **known or later developed.**

6 “[1] (2) ‘Commercial enterprise’ means a business operating in intrastate or interstate com-  
7 merce for profit. ‘Commercial enterprise’ does not include:

8 “(a) Activities by schools, libraries or religious organizations;

9 “(b) Activities incidental to a bona fide scholastic or critical endeavor;

10 “(c) Activities incidental to the marketing or sale of recording devices; and

11 “(d) Activities involving the recording of school or religious events or activities.

12 “[2] (3) ‘Fixed’ means embodied in a recording or other tangible medium of expression, by or  
13 under the authority of the author, so that the matter embodied is sufficiently permanent or stable  
14 to permit it to be perceived, reproduced or otherwise communicated for a period of more than  
15 transitory duration.

16 “[3] (4) ‘Live performance’ means a recitation, rendering or playing of musical instruments or  
17 vocal arrangements in an audible sequence in a public performance.

18 “[4] (5) ‘Manufacturer’ means the entity authorizing the duplication of a specific recording, but  
19 shall not include the manufacturer of the cartridge or casing itself.

20 “[5] (6) ‘Master recording’ means the master disk, master tape, master film or other device  
21 used for reproducing recorded sound from which a sound recording is directly or indirectly derived.

22 “[6] (7) ‘Motion picture’ includes any motion picture, regardless of length or content, that is  
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26 *or movies or*] amateur films that are shown free or at cost to friends, neighbors or civic groups.

27 “(8) **‘Motion picture theater’ means a movie theater, screening room or other venue that**  
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32 “[8] (10) ‘Recording’ means a tangible medium on which information, sounds or images, or any  
33 combination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an  
34 original phonograph record, disk, tape, audio or video cassette, wire, film or other medium now ex-  
35 isting or developed later on which sounds, images or both are or can be recorded or otherwise  
36 stored or a copy or reproduction that duplicates in whole or in part the original.

37 “[9] (11) ‘Sound recording’ means any reproduction of a master recording.

38 “[10] (12) ‘Videotape’ means a reel of tape upon which a motion picture is electronically or  
39 magnetically imprinted by means of an electronic video recorder and which may be used in video  
40 playback equipment to project or display the motion picture on a television screen.”.